THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.7563 OF 2006

DATED: 17-04-2006

BETWEEN

S. Suryakantha Rao,

S/o. S. Rangaiah,

R/o. Kakinada,

East Godavari District

and others.

...PETITIONERS

AND

Kakinada Municipal Corporation

Rep. by its Commissioner,

Kakinada, East Godavari District.

...RESPONDENT

ORDER:

This writ petition is filed to declare the action of the respondent in attempting to demolish the petitioners' premises bearing H.No.5-1-66, Subhash Road, Kakinada, East Godavari District without following the procedure of law as illegal and arbitrary.

Learned counsel for the petitioners submits that the petitioners 1 to 3 are the absolute owners of the aforementioned premises having purchased the same under different registered sale deeds dated 01.08.1993 and 30.08.1993 and they have

obtained permission from the respondent vide permit in BA.122/2001/G3 dated 21.03.2001 for conversion of roof. The petitioners 1 to 3 leased out the said premises in favour of the fourth petitioner vide lease deed dated 16.05.2005. While so, the respondent corporation in the process of widening the road to a depth of 10 feet on both sides of the road marked the premises of the petitioners to a depth of 8 feet. The respondents with a view to ease the traffic congestion and thereby ensure free flow of traffic have taken up the job of road widening on all the main roads of Kakinada. He further submits that the building of the petitioners is situated in their own site and there is no encroachment and there are no deviations.

The main grievance of the petitioners is that the respondents have not issued any notice before deciding to demolish the said building and the respondent corporation is trying to demolish the building for the purpose of widening the road without acquiring the property as contemplated under Chapter V of Hyderabad Municipal Corporation Act or under Land Acquisition Act, without following the due procedure prescribed under law and without paying any compensation either by way of private negotiations or by way of initiating proceedings under the Land Acquisition Act, which is utter violation of the principles of natural justice as well as Sections 146 and 147 of the Municipal Corporation Act (for short 'the Act').

No doubt widening/laying of the road is in the public interest but while laying the road, if any property of private individual is coming in the way, it is for the respondents to acquire the same either by way of initiating land acquisition proceedings or by following due process of law.

Having regard to the facts and circumstances of the case,
the respondent is directed not to demolish the structures of the petitioners and not to dispossess them without following due process of law either under Section 146 or 147 of the Act or by private negotiations or by initiating the proceedings under the Land Acquisition Act, 1894.

The writ petition is accordingly disposed of.

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V. ESWARAIAH, J

April 17, 2006

Note: Furnish C.C. of the order by 19.04.2006

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DSK